

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND (Providence)**

In Re: David W. Wagner	Case Number 1:18-bk-10071 Chapter 7
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DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2006-OPT5, ASSET-BACKED CERTIFICATES, SERIES 2006-OPT5 AND/OR ITS SUCCESSORS AND ASSIGNS,

Movant.

v.

DAVID W. WAGNER,

Debtor.

MOTION OF DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2006-OPT5, ASSET-BACKED CERTIFICATES, SERIES 2006-OPT5 FOR RELIEF FROM THE AUTOMATIC STAY AND FOR LEAVE TO FORECLOSE MORTGAGE AND MEMORANDUM IN SUPPORT THEREOF

Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 (hereinafter referred to as the “Movant”), a secured creditor, hereby moves this Court for Relief from the Automatic Stay pursuant to Bankruptcy Rules 4001 and 9014 and 11 U.S.C. Section 362(d) and for leave to foreclose a certain mortgage encumbering the property owned by the Debtor, known as *55 Downing Street, East Greenwich, RI 02818*. In support of this Motion, Movant states as follows:

1. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. 1334 and 28 U.S.C. 157(b)(2)(G). This case relates to a case under Title 11 of the United States Code (the “Bankruptcy Code”). This proceeding is a “core” proceeding as this term is defined in the Code.
2. On January 17, 2018, David W. Wagner (hereinafter referred to as the “Debtor”) filed a voluntary Chapter 7 Petition in Bankruptcy.
3. Movant is the current holder of a certain mortgage given by the Debtor to Option One Mortgage Corporation in the original principal amount of \$724,500.00 dated May 25, 2006, and in recorded with the Town of East Greenwich Land Evidence Records in Book 834, Page 173 (the “Mortgage”). A copy of the Mortgage is attached hereto as Exhibit A.

4. The Mortgage secures a promissory note of even date and original principal amount given by the Debtor to Option One Mortgage Corporation (the "Note") of which Movant is the current holder. A copy of the Note is attached hereto as Exhibit B.
5. Sand Canyon Corporation f/k/a Option One Mortgage Corporation assigned the Mortgage to the Movant by assignment dated September 5, 2012, and recorded with the Town of East Greenwich Land Evidence Records in Book 1173, Page 148, a copy of which is attached hereto as Exhibit C. The current loan servicer for the Movant is Ocwen Loan Servicing, LLC.
6. The Mortgage encumbers real property known as *55 Downing Street, East Greenwich, RI 02818* (hereinafter referred to as the "Property"). Copies of the Mortgage and Note are attached hereto as Exhibit A and Exhibit B respectively. The Mortgage is in first lien position. Aside from the Property, there is no other collateral securing the Debtor's obligation to Movant.
7. The Debtor has defaulted on the Note and Mortgage by failing to make regular payments to Movant.
8. As of January 26, 2018, the balance due Movant on the Note was approximately \$764,716.04 (may not include negative escrow balances or recent escrow advances). The full amount of the Movant's claim together with allowable post-petition interest, reasonable attorney fees, court costs, and other recoverable expenses is secured by the Mortgage.
9. According to a Broker's Price Opinion dated December 7, 2017, the fair market value of the Property is \$530,000.00. The liquidation value of the Property is \$500,562.00 based upon a usual and customary broker's commission of \$26,500.00 (5% of stated fair market value), deed stamps of \$2,438.00, and \$500.00 in miscellaneous estimated closing costs. A copy of the Broker's Price Opinion is attached hereto as Exhibit D.
10. As of January 26, 2018, the Debtor's mortgage account is due for the October 1, 2016 contractual due date. The current monthly payment is \$4,895.10, subject to such subsequent adjustment as may be specified in the note.
11. As of January 26, 2018, Debtor owed Movant a total contractual arrearage of \$81,757.83 calculated as follows:

- 2 monthly payments (10/01/16 - 11/01/16) at \$4,490.80/mo.	\$8,981.60
- 12 monthly payments (12/01/16 - 11/01/17) at \$4,646.68/mo.	\$55,760.16
- 2 monthly payments (12/01/17 - 01/01/18) at \$4,895.10/mo.	\$9,790.20
- Late Charges	\$2,371.32
- Property Inspection Fees	\$232.75
- Property Valuation Fees	\$85.00
- Foreclosure Fees/Costs	\$4,036.56

- Title Report Fees \$500.24

Total Contractual Arrearage \$81,757.83¹

12. In addition to the Mortgage to Movant, there are outstanding liens on the Property as follows:

<u>Lien</u>	<u>Type</u>	<u>Amount</u>	<u>Book/Page</u>
Movant	1 st Mortgage	\$764,716.04	834/173
American Express	Execution	\$58,494.73	1242/248
Internal Revenue Service	Federal Tax Lien	\$43,291.10	1040/257
Internal Revenue Service	Federal Tax Lien	\$139,550.00	1040/258
Internal Revenue Service	Federal Tax Lien	\$161,873.88	1158/323
Internal Revenue Service	Federal Tax Lien	\$103,437.98	1186/244
RI Dept. of Revenue	State Tax Lien	Unknown	1250/93
Eric Hassman	Execution	\$131,119.89	1366/66

The total of all liens on the Property is approximately \$1,402,483.62.

13. Movant is entitled to Relief from the Automatic Stay for cause pursuant to Section 362(d)(1) of the Code inasmuch as the Debtor has failed to make regular monthly mortgage payments to the Movant in violation of the terms of the Note and Mortgage.
14. Movant is entitled to Relief from the Automatic Stay and leave to foreclose its mortgage pursuant to 11 U.S.C. Section 362(d)(2) in that the Debtor has no equity in the Property above and beyond the Property's liquidation value and the Property is not necessary to an effective reorganization of the Debtor.
15. Ocwen Loan Servicing, LLC services the underlying mortgage loan and note for the property referenced in this Motion for Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT5, Asset-Backed Certificates, Series 2006-OPT5 (hereinafter referred to as the "Noteholder") and is entitled to proceed accordingly. Should the Automatic Stay be lifted and/or set aside by Order of this Court or if this case is dismissed or if the Debtor obtains a discharge and a foreclosure action is commenced or recommenced, said foreclosure action will be conducted in the name of the Noteholder. The Noteholder has the right to foreclose because Noteholder is the original mortgagee or beneficiary or assignee of the security instrument for the referenced loan. Noteholder directly or through an agent has possession of the promissory note and the promissory note is either made payable to Noteholder or has been duly endorsed.

¹ As of the date of this motion, Movant has incurred approximately \$750.00 in attorney fees and \$181.00 in attorney costs in connection with this motion. This amount will increase if counsel for Movant performs additional services for Movant in connection with this motion.

16. Within fourteen (14) days after service, if served electronically, as evidenced by the certification, and an additional three (3) days pursuant to Fed. R. Bank. P. 9006(f) if served by mail or other excepted means specified, any party against whom such paper has been served, or any other party who objects to the relief sought, shall serve and file an objection or other appropriate response to said paper with the Bankruptcy Court Clerk's Office, 380 Westminster Street, 6th Floor, Providence, RI 02903, (401) 626-3100. If no objection or other response is timely filed, the paper will be deemed unopposed and will be granted unless: (1) the requested relief is forbidden by law; (2) the requested relief is against public policy; or (3) in the opinion of the Court, the interest of justice requires otherwise.

WHEREFORE, Movant requests that this Honorable Court:

- (a) Grant Movant Relief from the Automatic Stay pursuant to 11 U.S.C. Section 362(d) and for leave to Foreclose Mortgage, allowing Movant, its successors or assigns to foreclose said mortgage (including, at its sole option, leave to accept a deed-in-lieu of foreclosure from the Debtor, their heirs, successors, assigns or transferees); and for it or a third party purchaser to prosecute summary process proceedings to evict any persons residing in the Property.
- (b) In the alternative, order Debtor to provide Movant with adequate protection of its claim; and
- (c) Grant such other Relief as this Honorable Court may deem just.

Date: February 5, 2018

Respectfully submitted,
Deutsche Bank National Trust Company, as Trustee for
Soundview Home Loan Trust 2006-OPT5, Asset-Backed
Certificates, Series 2006-OPT5
By its attorney,

/s/ Catherine V. Eastwood
Catherine V. Eastwood, Esquire
RI# 6406
Korde & Associates, P.C.
900 Chelmsford Street, Suite 3102
Lowell, MA 01851
Tel: (978) 256-1500
ceastwood@kordeassociates.com
bankruptcy@kordeassociates.com